

## MINUTES

### Tennessee Board of Examiners for Land Surveyors

The Tennessee Board of Examiners for Land Surveyors met on Thursday, April 29, 2010 at 9:00 a.m. in the 2<sup>nd</sup> Floor Conference Room of the Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN.

#### **THURSDAY, APRIL 29, 2010 –**

Staff members present were: Jackie Dillehay, Chairman; Tim Lingerfelt, Vice-Chairman; Sue Braly, Board Member; David Cagle, Board Member; Robert Herndon, Attorney for the Board; Laura Betty, Litigation Attorney for the Board; Donna Moulder, Administrative Director for the board; and Susan Lockhart, Executive Administrative Assistant. Guests present were Wilma Robinson, Court Reporter; James Boyer; Lori Medley; Mark Hoffman; and Lincoln Northcutt.

The meeting was called to order at 9:10 a.m. by Chairman Dillehay.

The agenda was then reviewed. Mr. Cagle then made a motion to adopt the agenda. Ms. Braly seconded the motion. The motion carried unopposed.

Mr. Herndon explained the process for rulemaking and called the rule making hearing to order. Court Reporter, Wilma Robinson, was on hand to record the hearing. Mr. Herndon read the rule and two written comments that were received for the record. Then the visitors were allowed to comment. After some discussion, changes to the proposed rule were made and agreed upon for submittal to the Attorney General's Office. The rule making hearing adjourned.

After a lunch break, the Board reconvened at 2:05 p.m.

The minutes of the previous meeting were then reviewed. Mr. Cagle made a motion to accept the minutes as read, seconded by Ms. Braly. The motion carried unopposed.

Mr. Herndon then presented the following Legal Report:

**Complaint #200602909 (old complaint)** – Mr. Herndon advised that a cease and desist letter had been previously issued regarding this complaint and shared copies of the Respondent's web pages for the board to determine if they were in compliance. Mr. Lingerfelt made a motion to open a complaint for further investigation, seconded by Mr. Cagle. The motion carried unopposed.

**Complaint #200802082** – This complaint was previously presented and the Board dismissed it due to lack of evidence of misconduct. Upon notification, the Complainant insisted that the Board lacked sufficient facts to make a valid decision. As a courtesy, the complaint was re-opened and an investigation ordered. Also, the Complainant was invited to submit any relevant information that was felt to be necessary. All inquiries have now been completed and the information submitted. Because the basis for the complaint appears to be competency, it was necessary for a Board member to review the content and make a recommendation for discipline, if any. At its January 13, 2010 meeting, the Board voted for an informal conference based on Mr. Lingerfelt's review; that informal conference was held on Wednesday, April 28, 2010.

Recommendation: Board discussion after results of informal conference is reported.

Mr. Lingerfelt presented his findings and recommended that a Consent Order be issued assessing a civil penalty of \$500. Mr. Cagle made a motion to accept Mr. Lingerfelt's recommendation, seconded by Ms. Braly. The motion carried unopposed.

**Complaint #200900779** – This complaint was previously presented, and the following is a synopsis of its history: *The complaint alleges that the Respondent, a licensed land surveyor, committed acts relative to the practice of land surveying on a piece of acreage that produced unsatisfactory results to an adjoining property owner. The Complainant evidently alleges that the Respondent participated in misconduct, and provides a series of the Respondent's answers to deposition questions as proof of the misconduct allegations. At its September meeting, the Board voted to table the matter until a full, to-scale document be delivered to Mr. Dillehay in order that a complete review be conducted in context to the other data in the complaint file. At its January 13, 2010 meeting, the Board voted for an informal conference based on Mr. Dillehay's review; that informal conference was held on Wednesday, April 28, 2010.*

Recommendation: Board discussion after results of informal conference is reported.

Mr. Dillehay presented his findings and recommended that a Letter of Caution be issued to the Respondent. Mr. Lingerfelt made a motion to issue a Letter of Warning to the Respondent, seconded by Mr. Cagle. The motion carried unopposed.

**Complaint #200802526** – The complaint was previously presented and alleges that the Respondent, a licensed land surveyor, committed acts relative to the practice of land surveying on a piece of acreage that produced results that dispute with previous surveys. The land in question is the subject of a purchasing agreement and is known by all parties to have boundary location

issues, and the Respondent initially did not want to survey the land because of this. The Complainant evidently alleges that the Respondent participated in misconduct in performing the resulting survey. At its January 2010 meeting, the complaint was presented by Board member Mr. Dillehay and the Board adopted a recommendation for a Consent Order for a civil penalty of \$500.00, a Letter of Warning, attendance of at least 4 hours of Standards of Practice seminar(s) as part of 2011 PDH's, and submission of 5 completed plats for Board review of competence. The Respondent has complaint and now submits the 5 plats for review.

Recommendation: Board discussion after plat review.

Mr. Herndon advised that the Respondent submitted an education certificate and the plats requested pursuant to the Consent Order previously issued in this matter. It was agreed that the Respondent had complied with the Consent Order.

Laura Betty, Litigation Attorney for the Board, joined the meeting.

**Complaint #200501940** – This complaint alleges that the Respondent, an unlicensed individual, participated in the practice of land surveying by using a GPS systems to divide a family farm between two siblings. The information was used to create quit claim deeds that were filed in the property assessor's office. An affidavit from an official of that office declares that the activity was confined to this privately-owned property and no ownership changed hands. The legal descriptions were accepted and filed in that office. Respondent's counsel also maintains that no land surveying took place because the Respondent did not "offer land surveying services to anyone." A previous attorney issued a Consent Order for a civil penalty of \$1,000, but there is evidence that the attorney response was not presented to the Board. It cannot be ignored that should these parcels change hands in the future, the purchase may possibly depend upon these documents although the initial activity only impacted "privately-owned land."

After some discussion, the Board advised Mr. Herndon to reissue the Consent Order.

**Complaint #200600202** – This complaint was previously presented and alleges that the Respondent, a licensed individual, committed misconduct in the practice of land surveying that created a boundary dispute between two private parties. This dispute resulted in litigation to settle the dispute. That litigation has since concluded and the Complainant now requests that the complaint against the Respondent be withdrawn.

Recommendation: Dismiss and close the case.

Mr. Lingerfelt made a motion to withdraw the complaint, seconded by Mr. Cagle. The motion carried unopposed.

**Complaint #200704823** – The complaint alleges that the Respondent, a licensed land surveyor, committed acts in the course of his practice that resulted in a boundary dispute. After a review of the complaint it seems that the recording of the Respondent's information was not the cause of any boundary dispute and that any perceived errors were properly dealt with by the Respondent. The Respondent was issued a Letter of Warning in 2006 relative to standards of practice violation. Because this is a boundary dispute, the Board's jurisdiction is limited.

Recommendation: Close the case with a Letter of Caution regarding communication with clients.

Mr. Lingerfelt made a motion to accept Legal's recommendation, seconded by Mr. Cagle. The motion carried unopposed.

Ms. Lockhart left the meeting at 4:00 p.m.

**Complaint #200901627** – This complaint was previously presented. The complaint alleges that the Respondent, a registered land surveyor, committed competency errors in the performance of land surveying services. This complaint arises from a previously filed complaint which was dismissed in 2000, but the Complainant alleges new information that is relative to the competency of the Respondent and provides some technical information. At the January 13, 2010 meeting, the Board elected to have a Board member review the complaint to establish competency issues based on this new information; the property is located in West Tennessee. Mr. Dillehay was assigned the review.

Recommendation: Accept the Board member's recommendation.

Based on Mr. Dillehay's recommendation, the board voted to dismiss this complaint due to lack of grounds for disciplinary action.

**Complaint #200901787** – This complaint was previously presented. The complaint alleges that the Respondent, a registered land surveyor, failed to competently perform land surveying services by excluding known parcels of property, among other things. The complaint features extensive technical data in support of the allegations. The Respondent denies any misconduct. At the January 13, 2010 meeting, the Board elected to have a Board member review the complaint to establish competency issues; the property is located in East Tennessee. Mr. Cagle was assigned the review.

Recommendation: Accept the Board member's recommendation.

Based Mr. Cagle's recommendation, the board voted to close the complaint and flag for future similar complaints.

**Complaint #200902112 (2 Respondents)** – These complaints were previously presented. The complaints allege the Respondents, two different registered land surveyors, produced plats on the same property which appear to conflict on at least one point. Both Respondents maintain that their respective plats are correctly rendered and accurate. There are no prior complaints on either Respondent. At the January 13, 2010 meeting, the Board elected to have a Board member review the complaint to establish competency issues; the property is located in Middle Tennessee. Mr. Cagle was assigned the review.

Recommendation: Accept the Board member's recommendation.

Based on Mr. Cagle's recommendation, the board voted to dismiss the complaint due to lack of grounds for disciplinary action.

**Complaint #200902117** – The complaint was previously presented. The complaint alleges that the Respondent, a licensed land surveyor, prepared three different mappings of the same parcel, one of which conflicts with the other two. The two that agree place the platted land within a flood plain. One of these was filed and recorded, which seriously affected the value of the subject parcel. The Respondent denies misconduct. All three plats are included in the file. At the January 13, 2010 meeting, the Board elected to have a Board member review the complaint to establish competency issues based on this new information; the property is located in East Tennessee. Mr. Dillehay was assigned the review.

This complaint is to be held for the next meeting as Mr. Dillehay's review is incomplete.

**Complaint #200902465** – The complaint was previously presented and alleges the Respondent, a licensed land surveyor, conducted surveying services that violated acceptable standards of conduct. The Respondent provides a description of the events and denies any misconduct. There may or may not be competency other than communication breakdowns. At its January 13, 2010 meeting, the Board elected to have Board member Mr. Dillehay review the case for competency issues.

Based on Mr. Dillehay's recommendation, the board voted to issue a Letter of Caution based on a violation of rule 0820—4—.08(2) regarding the release of an unsealed document.

The following cases were not formally presented to the Board for a decision, but require a review by a Board member to determine either misconduct or incompetence:

**Complaint #200801087** – This complaint involves possible fraud in East Tennessee. This complaint was assigned to Jackie Dillehay for review.

**Complaint #200902025** – This complaint alleges misconduct in Middle Tennessee. This complaint was assigned to David Cagle for review.

**Complaint #200902700** – This complaint alleges misconduct in East Tennessee. This complaint was assigned to David Cagle for review.

**Complaint #201000037** – This complaint alleges incompetence in East Tennessee. This complaint was assigned to David Cagle for review.

**Complaint #201000062** – This complaint alleges misconduct in West Tennessee. This complaint was assigned to Tim Lingerfelt for review.

**Complaint #201000221** – This complaint was opened by the Board and alleges incompetence. This complaint was assigned to Jackie Dillehay for review.

**Complaint #201000363** – This complaint alleges misconduct and malpractice in West Tennessee. This complaint was assigned to Tim Lingerfelt for review.

**Complaint #201000584** – This complaint alleges unlicensed practice of land surveying by a licensed engineer in West Tennessee. This complaint was assigned to Tim Lingerfelt for review.

**Complaint #201000991** - This complaint alleges incompetence in East Tennessee. This complaint was assigned to Jackie Dillehay for review.

There being no further business, the meeting was adjourned at 5:00 p.m.

***FRIDAY, APRIL 30, 2010 –***

The Tennessee Board of Examiners for Land Surveyors met on Thursday, January 14, 2010 at 9:00 a.m. in the 3<sup>rd</sup> Floor Conference Room of the Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN.

Those present were: Jackie Dillehay, Chairman; Tim Lingerfelt, Vice-Chairman; Sue Braly, Board Member; David Cagle, Board Member; Susan Lockhart, Executive Administrative Assistant; and Donna Moulder, Administrative Director for the board.

The meeting was called to order at 9:25 a.m. by Chairman Dillehay.

## **NEW BUSINESS:**

Ms. Moulder asked the Board to appoint a new continuing education advisory committee member. Mr. Lingerfelt made a motion to appoint Floyd Smith of Knoxville, seconded by Mr. Cagle. The motion carried unopposed.

Ms. Moulder requested that the Board review the NCEES exam registration deadline. The Board advised that all exam applications, including retakes, should be received by the office no later than August 1, 2010 for the tests scheduled in October 2010. Mr. Lingerfelt asked if the fees cover the cost of exams from NCEES, proctors and fee from exam contractor. Ms. Moulder advised that she had checked on this before and believes that the exam fees due cover the expenses in question.

Mr. Lingerfelt presented the report that he had formerly submitted to the office regarding the 2010 NCEES Combined Northeast and Southern Zone Interim Meeting that he and Chairman Dillehay attended earlier in the month. He advised that twenty-seven (27) boards were represented at the meeting and the primary topic of interest regarded the implementation of computer based testing for the FS exam for Surveyors. He further advised that the final vote for the implementation will be held at the national meeting in August 2010 and if approved, the first computer based exams are expected to be administered in the Fall of 2011. He also mentioned that another key topic of discussion regarded faculty licensure at the university (college) level for surveying and engineering and that a committee has been established to study this matter further.

Mr. Cagle made a motion for Chairman Dillehay and Mr. Lingerfelt to represent the Board at the 2010 Annual NCEES Meeting in August, seconded by Mr. Lingerfelt. The motion carried unopposed.

Ms. Braly joined the meeting at 10:00 a.m. and the Board recessed at this time. The meeting reconvened at 10:15 a.m.

Ms. Moulder presented the courses submitted for approval by Robert Freeland of the University of Tennessee at Knoxville. Mr. Cagle made a motion to approve the courses, seconded by Mr. Lingerfelt. The motion carried unopposed.

The Board then discussed the email submitted by Mr. Freeland regarding licensure for instructors. Mr. Lingerfelt made a motion to table this matter for further review, seconded by Mr. Cagle. Chairman Dillehay asked Mr. Lingerfelt to research the matter and report back at the meeting in June.

Ms. Moulder presented a letter from John M. Payne regarding the monumentation of a boundary formed by the specified elevation of a contour line. It was determined that a contour line is a physical monument identified with a specific datum in itself and said line contains infinite changes of directions so the

location is ever changing along the line. These changes create difficulties for additional monuments.

The Board recessed for lunch at 11:15 a.m. and reconvened at 12:15 p.m.

Ms. Moulder presented an application from William Thomas Smith for consideration. Ms. Braley made a motion to approve the application upon the completion of the Tennessee portion of the examination, seconded by Mr. Lingerfelt. The motion carried unopposed.

Ms. Moulder presented an email received April 16, 2010 concerning a question about the land surveyor in charge (requirement for a licensed land surveyor on staff). Mr. Lingerfelt made a motion to open a complaint to garner facts about this issue, seconded by Ms. Braly. The motion carried unopposed.

Chairman Dillehay advised that the next item on the agenda was to discuss the next chapter in law or rules to be reviewed. Ms. Braly made a motion that the next law and/or rule to be discussed should be regarding professional conduct, seconded by Mr. Cagle. The motion carried unopposed.

Ms. Moulder advised that she had no news to report regarding the online renewal status.

Ms. Moulder advised that John Cothran, Director of the Board for Architects and Engineers, sent her an email on behalf of his Board requesting a meeting with the Board of Examiners for Land Surveyors. The Board agreed to schedule their next meeting in June to coincide with the dates of the Board for Architects and Engineers.

Mr. Lingerfelt presented an email that he received from Jerry Taylor at East Tennessee State University regarding online courses allowing surveyors to oversee lab work. The question posed was in regards to land surveyors not being allowed to teach courses unless they have a masters degree.

Chairman Dillehay distributed a list of licenses that expired 12/31/09, as of 4/21/10, that he received from Ms. Moulder. There were 76 licenses on the list.

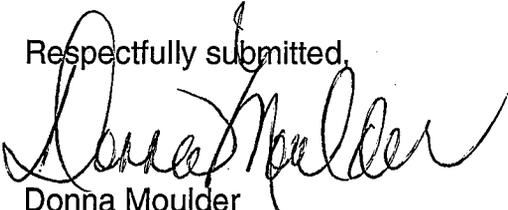
John Cothran, Director of the Board for Architects and Engineers, spoke with the board regarding the joint meeting that he requested.

In addition to the June meeting, the Board decided to meet August 5 and 6, 2010 to review applications for the October examination.

Ms. Moulder presented new applicant certificates for the members to sign.

There being no further business, the meeting adjourned at 2:30 p.m.

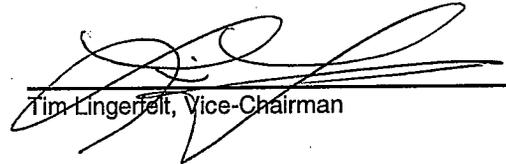
Respectfully submitted,



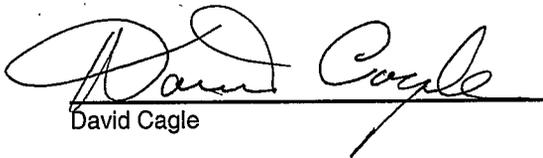
Donna Moulder  
Administrative Director



Jackie Dillehay, Chairman



Tim Lingerfelt, Vice-Chairman



David Cagle

Sue Braly